IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-822

ERNEST FRY AND THELMA BOEHM,
Petitioners,

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES TEMPORARY EMERGENCY COURT OF APPEALS

MEMORANDUM CONTRA MOTION TO DISMISS THE WRIT OF CERTIORARI

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The Solicitor General, on behalf of the United States, has moved that the Court dismiss the Writ of Certiorari in this case based on the ground that the Economic Stabilization Act of 1970, 84 Stat., 799, expired on May 1, 1974. The Solicitor General contends that since the statute expired that the case no longer has prospective importance.

We emphatically disagree. We do agree that the Economic Stabilization Act of 1970 expired on May 1, 1974. We state the question presented to this Court a bit differently then is presented by the Solicitor General. We con-

tend that the question presented to the Court is whether or not the Tenth Amendment of the Constitution bars the federal government from limiting and controlling salaries and wages paid to state employees.

The Solicitor General states that:

> "It appears unlikely that there will be significant litigation involving wages and salaries of state employees under the Act."

However, we certainly do not agree that there will not be significant litigation in the future involving the precise issue presented to the Court. There is an excellent chance that the Congress will enact legislation again very similar to the Economic Stabilization Act of 1970 or even precisely the same. The same question as is presented here would occur again.

The Solicitor General does not say so but implies this case is moot. It certainly is not. The Temporary Emergency Court of Appeals has a permanent injunction against the State of Ohio restraining it from paying some Ten and One-Half Million Dollars to various state employees. But for the restraining order the money would be paid. The Writ of Certiorari granted by this Court means that this injunction will be reviewed. In California the amount in question is approximately Seventy Million Dollars. The decision of the Supreme Court of the United States in this case will be dispositive of the Ohio problem, the California problem and the Missouri problem.

We believe this Court was quite right when it decided the time was ripe for a decision on this grave question when it granted the Motion for Writ of Certiorari on February 19, 1974. We urge that this Court overrule the

Motion filed by the Solicitor General and permit argument on the matter.

Respectfully submitted,
JOHN A. BROWN
Attorney for Petitioners

CERTIFICATE OF SERVICE

This will certify that John A. Brown served three copies of the Memorandum Contra Motion to Dismiss on Robert Bork, Solicitor General of the United States, this 3rd day of June, 1974.

JOHN A. BROWN